

Message Text

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ACTION L-03

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E.O. 11652: N/A

TAGS: ASCH, PDIP, GY

SUBJECT: CIVIL SUIT AGAINST CHAIRMAN OF SCHOOL BOARD: HOW
DO WE PLEAD?

1. SUMMARY: FORMER EMPLOYEE SUING AMERICAN SCHOOL BOARD CHAIRMAN.
PLAINTIFF'S CASE VERY WEAK, BUT COMPLICATED BY OTHER FACTORS.
UNLESS DEPARTMENT INSTRUCTS OTHERWISE, WILL PLEAD DIPLOMATIC
IMMUNITY ON BEHALF OF BOARD CHAIRMAN, INFORMING FOREIGN MINISTER
IN ADVANCE WE ARE MAKING THAT PLEA ON INSTRUCTION OF DEPARTMENT.

END SUMMARY.

2. CHAIRMAN OF BOARD OF GEORGETOWN AMERICAN SCHOOL, MRS.
MARY MUDGE, RECEIVED SUMMONS TO APPEAR IN LOCAL MAGISTRATES
COURT MARCH 4 TO RESPOND TO CIVIL SUIT BY GEORGE PERCY, RECENTLY
RESIGNED GUYANESE CARETAKER-WATCHMAN OF SCHOOL. SUMMONS WAS SIGNED
FOR BY SCHOOL'S PRESENT CARETAKER, AND HENCE MAY NOT HAVE BEEN
PROPERLY SERVED. PERCY SUING SCHOOL FOR GUYANESE DOLS 2,289.60
(ABOUT US DOLS 1,000) FOR EXTRA SERVICES AS WATCHMAN. PERCY RECENTLY
RESIGNED UNDER PRESSURE
FROM BOARD, WHICH GAVE EX GRATIA TERMINATION PAYMENT.

3. SCHOOL'S COUNSEL, LOCAL BARRISTER J.T.CLARKE, HAS GIVEN US
WRITTEN OPINION THAT SUIT SHOULD BE STRUCK OUT AB INITIO BY
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MAGISTRATE ON GROUND THAT SCHOOL BOARD NOT A LEGAL ENTITY UNDER

GUYANESE LAW, ERGO, MRS. MUDGE CANNOT BE SUED IN REPRESENTATIVE CAPACITY OF NON-LEGAL ENTITY. FORMER SCHOOL BOARD CHAIRMAN WITH WHOM PERCY MADE ORIGINAL WORK CONTRACT WAS WIFE OF U.S. DIPLOMAT AND NO LONGER IN GUYANA. EVENIF NOT STRUCK OUT AB INITIO, CLARKE'S OPINION IS THAT QUOTE WE DO NOT SEE THE POSSIBILITY OF THIS CASE GOING AGAINST HER UNQUOTE. SCHOOL BOARD AND EMBASSY AGREE THAT PERCY HAS NO LEGAL OR MORAL CLAIM AGAINST BOARD. EMBASSY BELIEVES SUIT PROVOKED BY PERCY'S COUNSEL, PERHAPS GUYANA'S MOST EXTREME LEFTIST AND ANTI-U.S. BARRISTER, IN EFFORT TO EMBARRASS EMBASSY AND U.S. THROUGH ADVERSE PUBLICITY.

4. BOARD CHAIRMAN MUDGE IS WIFE OF AID DIRECTOR ARTHUR MUDGE. STATUS OF MUDGE IMMUNITY IS UNCLEAR, SINCE GOG INFORMED US SEVERAL YEARS AGO THAT IT DOES NOT RECOGNIZE AID STATUS AGREEMENT SIGNED BEFORE INDEPENDENCE WITH UK AND SINCE AID/W EIGHT MONTHS AGO REJECTED EMBASSY'S PROPOSAL FOR LIMITED AID PRIVILEGES AND IMMUNITIES AGREEMENT IN FAVOR OF BROADER AID BILATERAL WHICH WAS UNTIL RECENTLY STILL UNDERGOING CIRCULAR 175 CLEARANCE IN WASHINGTON. HOWEVER, IN PRACTICE, GOG HAS THUS FAR GIVEN AID AMERICAN EMPLOYEES PRIVILEGES IDENTICAL TO EQUIVALENT CATEGORY EMBASSY EMPLOYEES. AID DIRECTOR MUDGE APPEARS ON DIPLOMATIC LIST UNDER CATEGORY OF QUOTE REPRESENTATIVES OF INTERNATIONAL ORGANIZATIONS IN GUYANA UNQUOTE ALONG WITH REPRESENTATIVES OF UNDP, WHO,ETC; DESPITE OUR FORMAL REQUEST LAST YEAR TO FONMIN THAT PRINCIPAL AID REPS BE INCLUDED ON LIST GROUPED WITH EMBASSY'S DIPLOMATIC PERSONNEL. AID DIRECTOR MUDGE CARRIES DIPLOMATIC IDENTITY CARD, BUT MRS. MUDGE CARRIES GUYANESE IDENTITY CARD WHICH DIFFERS FROM THOSE OF DIPLOMATS AND MOST DIPLOMATIC DEPENDENTS IN THAT IT DOES NOT RPT NOT STATE THAT SHE IS ENTITLED TO THE COURTESIES AND PRIVILEGES OF A PERSON OF DIPLOMATIC STATUS.

5. BOARD CHAIRMAN MUDGE AND HUSBAND PREFER TO CONTEST CASE ON BASIS THAT LAW AND EQUITY FAVOR DEPENDENT AND THAT PUBLICITY ASSOCIATED WITH PLEA OF DIPLOMATIC IMMUNITY WOULD BE MORE DAMAGING TO BOARD THAN PUBLICITY GENERATED BY DEFENSE ON MERITS, BUT WILL PLEAD AS INSTRUCTED BY AMBASSADOR. ON OTHER HAND, EMBASSY RELUCTANT TO ESTABLISH PRECEDENT THAT AMERICAN SCHOOL SUBJECT TO GUYANESE LEGAL JURISDICTION. GOG HAS RECENTLY ANNOUNCED TAKEOVER OF ALL LOCAL SCHOOLS AS PART OF DRIVE TOWARD MARXIST-LENINIST SOCIETY AND HAS ADDED THAT NO SCHOOL IN GUYANA WILL BE ALLOWED TO LIMITED OFFICIAL USE

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CHARGE TUITION. THERE HAS BEEN NO ATTEMPT THUS FAR TO APPLY THESE DECISIONS TO SMALL AND LOW-PROFILE AMERICAN SCHOOL. EMBASSY HAS DELIBERATELY NEVER REGISTERED OR LEGALLY ESTABLISHED AMERICAN SCHOOL IN ORDER TO MAINTAIN POSITION THAT IT IS BRANCH OF EMBASSY NOT SUBJECT TO GUYANESE LAW. IT WAS OPENED SEVERAL YEARS AGO WITH ORAL PERMISSION OF PRIME MINISTER AND FOREIGN MINISTER ON UNDERSTANDING THAT STUDENT BODY WOULD BE RESTRICTED TO CHILDREN OF FOREIGN DIPLOMATS AND OF U.S. CITIZENS NOT PERMANENTLY RESIDENTS

OF GUYANA. STUDENT BODY IS SO CONSTITUTED.

5. UNLESS DEPARTMENT ADVISES OTHERWISE BY COB MONDAY, MARCH 1, I WILL INFORM FOREIGN MINISTER MARCH 2 OF SUMMONS (HE IS ALREADY SOMEWHAT FAMILIAR WITH EARLIER ASPECTS OF CASE) AND TELL HIM OF OUR INTENTION TO PLEAD DIPLOMATIC IMMUNITY FOR MRS. MUDGE ON INSTRUCTION OF DEPARTMENT. WE DOUBT FONMIN WILL COMMIT HIMSELF ON SUBSTANCE OF PLEA, BUT WE WILL ENTER THAT PLEA EVEN IF HE ADVISES THAT FONMIN CANNOT SUPPORT IT ON BASIS THAT AID PERSONNEL DO NOT HAVE LEGAL DIPLOMATIC STATUS DESPITE AID DIRECTOR MUDGE'S DIPLOMATIC ID CARD AND APPLICABILITY OF PARAGRAPH 1 OF ARTICLE 37 OF VIENNA CONVENTION (I.E. IF MINISTER CONTENDS THAT HIS DIPLOMATIC ID CARD WAS ISSUED IN ERROR). I DO NOT RPT NOT RECOMMEND THAT THIRD OPTION OF PAYING PLAINTIFF'S SPURIOUS CLAIM BE FOLLOWED, SINCE PAYMENT WOULD COST SCHOOL BOARD CONSIDERABLY MORE THAN ANTICIPATED ATTORNEY'S FEES, WOULD LEAVE SCHOOL OPEN TO FURTHER BLACKMAIL, WOULD BOOST STATURE OF PLAINTIFF'S ANTI-U.S. LEFT-RADICAL ATTORNEY IN THIS SMALL COMMUNITY, AND WOULD ANTAGONIZE BOARD'S COUNSEL WHO IS SENIOR MEMBER OF PRIME MINISTER BURNHAM'S OLD LAW FIRM
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